

Private property and state finances. The emperor's right to donate his subjects' land in the Comnenian period*

Kostis Smyrlis

New York University

The question of the respect of private property in Byzantium is examined through the analysis of a series of confiscations of real estate situated in Constantinople, which were carried out from 1082 to 1202 in favour of the Italian republics of Venice, Pisa and Genoa. It is argued that these confiscations were not arbitrary but justified by the circumstances. Finally, these expropriations are set against the developments in the system by which the state remunerated its servants in the period after the eleventh century, increasingly by land grants.

Understanding the extent to which private property was respected by the medieval Byzantine state is essential for anyone who wishes to examine the nature of that polity and its evolution over time. It is about deciding whether Byzantium was a despotic state governed by an all-powerful emperor and whether the principles of Roman law remained valid through the Middle Ages. The question of private property and of the state's rights over the land has been raised repeatedly by Alexander Kazhdan. In several books and articles Kazhdan has insisted on the existence of the 'state's supreme ownership, *dominium directum*, over the land tilled by the Byzantine population' that restricted the property rights of individuals. Using examples that come from the tenth and eleventh century, he has found several indications of the existence of this supreme ownership, most important among these being the state's right to confiscate private property.¹ Based on the analysis of a number of confiscation cases, the same scholar has concluded that the state had the right to seize private properties arbitrarily, without having recourse to any

* I dedicate this article to the memory of Angeliki Laiou who shared with me some of her ideas on confiscation. I would also like to thank Jacques Lefort and one anonymous reader for their valuable comments.

1 See in particular A. Kazhdan and S. Ronchey, *L'aristocrazia bizantina, dal principio dell'XI alla fine del XII secolo* (Palermo 1997) 177–85 and A. Kazhdan, 'State, feudal, and private economy in Byzantium', *DOP* 47 (1993) esp. 95–8.

specific law.² This theory has been opposed by scholars who have questioned Kazhdan's interpretation of the evidence and have insisted on the existence of full private ownership.³

In this paper, I would like to reconsider the question of private property and the rights of the state over land by focusing on confiscation. I will argue against the theory of arbitrary expropriation by the state. I will also discuss the pattern of confiscation in the Comnenian period and will try to connect it to the way the state remunerated its servants. The basis of my study is a series of expropriations that took place between the end of the eleventh and the very beginning of the thirteenth century. These are the confiscations of real estate, situated mainly in Constantinople, that was seized by the state and was given to the Italian city-states of Venice, Pisa and Genoa and to other foreign states. Although not discussed by Kazhdan, these confiscations represent some of the best documented cases of expropriation before 1204. I will examine the type and importance of the properties seized, the identity of the dispossessed owners and whether the lands were eventually restored to their owners or if the latter were compensated. It is also useful to consider the nature of the donations that followed the confiscations, that is, whether they were conditional and if there was any time limit to them. I will equally look into the theory that developed around these confiscations, that is, how the imperial side justified these measures, and what were the claims regarding the emperor's rights in this matter; but also, the opposition to these measures by those affected.

Several acts concerning the donation of properties and the concession of commercial and other privileges to the cities of Venice, Pisa and Genoa have survived. Indirectly we are informed that donations of properties were also made in favour of the Germans and the French and probably also of the city of Amalfi.⁴ At least in the case of Venice, Pisa and Genoa, the donations and privileges were awarded, each time under different political circumstances, in order to secure the active military support or the neutrality of the city-states.⁵ The donations were made or confirmed by chrysobulls issued to the Italians

2 Kazhdan, 'State, feudal, and private economy in Byzantium', 96; A. Kazhdan, 'Do we need a new history of Byzantine law?', *JÖB* 39 (1989) 15.

3 See in particular G. Litavrin, 'Le problème de la propriété d'État en Byzance aux x^e-xi^e siècles', *Byzantiaka* 9 (1989) esp. 17–21. See also H.-G. Beck, *Res publica Romana: Vom Staatsdenken der Byzantiner* (Munich 1970) 38–41 and N. Oikonomidès, *Fiscalité et exemption fiscale à Byzance (IXe–XIe s.)* (Athens 1996) 46–7. For a bibliography of the different views on this issue, see Kazhdan, 'State, feudal, and private economy', 84–5 nn. 4, 9.

4 These acts, issued by the Byzantine authorities, have survived in copies kept in Italian archives, sometimes in both Greek and Latin version, sometimes only in Latin. For the Venetians: M. Pozza and G. Ravegnani, *I trattati con Bisanzio: 992–1198* (Venice 1993), nos. 2–11. For the Pisans: F. Miklosich and I. Müller, *Acta et diplomata graeca medii aevi*, 6 vols. (Vienna 1860–1890; hereafter MM) III, 3–23. For the Genoese: A. Sanguineti and G. Bertolotto, 'Nuova serie sulle relazioni di Genova coll'Impero bizantino', *Atti della Società ligure di storia patria* 28 (1896–1898) 364–6, 413–44, 475–99.

5 On these circumstances, see R.-J. Lilie, *Handel und Politik zwischen dem byzantinischen Reich und den italienischen Kommunen Venedig, Pisa und Genua in der Epoche der Komnenen und der Angeloi: 1081–1204* (Amsterdam 1984) *passim*.

by Byzantine emperors, from Alexios I Komnenos to Alexios III Angelos.⁶ Very important information on the confiscations that preceded the donations is yielded by another kind of document, the *praktika paradoseos*, that is, the acts recording the properties' transfer to the beneficiaries, which describe in detail the real estate alienated.⁷ The information regarding the concessions has been analysed by scholars studying the topography and the appearance of Constantinople, most notably by Paul Magdalino.⁸

Venice

The first to receive a donation of real estate situated for the most part in the commercial quarter of Perama in Constantinople were the Venetians. According to a chrysobull probably dating from 1082,⁹ the Venetians were given a number of workshops on the mall (*embolus*; Gr. *embolos*) of Perama and a bakery belonging to the *oikos* of Petriion which had an annual rent of 20 *nomismata*. They also received three wharves (*scale*; Gr. *skalai*), evidently on the Golden Horn. The emperor added to the donation a church and some

6 Almost all chrysobulls present the concessions as being freely awarded by the emperor in remuneration of the services offered or promised by the beneficiaries. Venice: Pozza and Ravegnani, *I trattati*, nos. 2 (1082), 3 (1126), 4 (1147), 5 (1148), 6, 7 (1187), 9 (1189); Pisa: MM III, 9–13 (1111), 13–5 (1170), 3–23 (1192); Genoa: Sanguineti and Bertolotto, *Nuova serie*, 421–3, 432–3 (1170), 413–33 (1192). However, the chrysobulls awarded to Venice in 1189 and to Pisa and Genoa in 1192 bear clear marks of the pressure the Italians exerted on the Byzantine emperor in order to gain the donations. On the form (unilateral) and substance (bilateral) of these chrysobulls, see the remarks in A. Laiou, 'The emperor's word: chrysobulls, oaths and synallagmatic relations in Byzantium (11th–12th c.)', *TM* 14 (2002) esp. 356–7. Two late chrysobulls in favour of Venice acquire a distinctly different form; although keeping the external characteristics of a chrysobull, these acts are in fact treaties agreed between states and detailing the obligations of each party: Pozza and Ravegnani, *I trattati*, nos. 8 (1187), 11 (1198).

7 These are sometimes included in the relevant chrysobulls or are preserved as separate documents. Inside chrysobulls: Pozza and Ravegnani, *I trattati*, 72–4 (1148); MM III, 18–23 (1192). As separate documents: Sanguineti and Bertolotto, *Nuova serie*, 364–6 (1170), 434–44 (1192), 475–99 (1202).

8 See P. Magdalino, *Constantinople médiévale* (Paris 1996); *idem*, 'Maritime neighborhoods of Constantinople: commercial and residential functions, sixth to twelfth centuries', *DOP* 54 (2000) 209–226; *idem*, 'Medieval Constantinople: built environment and urban development', in A. Laiou (ed.), *The Economic History of Byzantium*, 3 vols. (Washington 2002; hereafter *EHB*) 529–37. These data have also been used extensively by Raymond Janin in *Constantinople byzantine*, 2nd edn (Paris 1964) and in *La géographie ecclésiastique de l'empire byzantin. Première partie : Le siège de Constantinople et le patriarcat œcuménique, Tome III : Les églises et les monastères*, 2nd edn (Paris 1969). See also A. Berger, 'Zur Topographie der Ufergegend am Goldenen Horn in der byzantinischen Zeit', *Istanbuler Mitteilungen* 45 (1995) 149–65; D. Jacoby, 'The Venetian quarter of Constantinople from 1082 to 1261: topographical considerations', in C. Sode and S. Takács (eds.) *Novum Millennium. Studies on Byzantine history and culture dedicated to Paul Speck* (Aldershot 2001) 153–70.

9 The act has survived in two slightly different Latin versions: Pozza and Ravegnani, *I trattati*, no. 2.

imperial rental houses (*pensionalia*) in the town of Dyrrachion. Further information on the identity of the owners is given by a clause of the same chrysobull forbidding those dispossessed to contest the Venetians' ownership of the donated properties. Here are mentioned specifically the *sekreta* of Petrion and Myrelaion, as well as indefinite private persons, monasteries and churches.¹⁰ This means that all owners specifically known to have been dispossessed were either the state itself or bureaux managing state property, that is the *sekreta* of Petrion and Myrelaion. However, in view of what we know from a contemporary source and from the later acts concerning the ownership pattern of the area, it is very probable that some of these properties, especially the *skalai*, belonged to one or more monasteries.¹¹ The possibility that other types of owners, the church or private persons, were also affected, cannot be excluded. It is worth reading more closely the section of the chrysobull guaranteeing the possession of the donated properties. Here is a free rendering of this section:

... the emperor has ordered that nobody opposes [the Venetians] who are his true servants, have helped him against his enemies and promise to [offer their services] until the end of time. Nobody should have any hostile feeling towards such people and nobody should take any [legal] action against them on account of the donated workshops and *skalai*. To whom ever these possessions belong, whether they are ecclesiastical, private, public, or of a pious house, nobody will seize them. These possessions belong now to the faithful servants of the emperor, the Venetians, [and will remain so] in the future, since they have shown great faithfulness and true disposition towards Byzantium and the emperor, and [because] they promise to serve [the empire] wholeheartedly in perpetuity and are willing to fight for the state of the Romans and for the Christians. Who will oppose such men or who will make a lawsuit against them? Neither the *sekretion* of Petrion nor [the *sekretion*] of Myrelaion, nor any private person, monastery or church, to which the donated workshops and *skalai* belong, will turn against them. But, they will remain silent and will respect the imperial decision and donation. In fact, if [the emperor]

10 Pozza and Ravegnani, *I trattati*, 43: nec secretum Petrii vel Mireleu, nec etiam privatus quisque, sed nec monasterium vel templum sanctum. It is noteworthy that where the first Latin version has 'privatus quisque' the second has 'familiarium aliquis'. It is hard to imagine a Greek expression that could be translated in both of the above ways, the first corresponding best to a phrase including the word *prosopon*, the second to an expression containing the term *oikeios* (someone close to the emperor). It is more likely that the original gave *prosopon* rather than *oikeios*, since the latter is normally accompanied by the expression τῇ βασιλείᾳ μου.

11 The contemporary source is Attaleiates, who says that the *skalai* belonged for the most part to pious houses and monasteries: Michael Attaleiates, *Historia*, ed. I. Bekker (Bonn 1853) 278; ed. I. Pérez Martín (Madrid 2002) 199–200. On the ownership pattern of the area as seen in the later acts concerning the Italian concessions, see Magdalino, *Constantinople médiévale*, 78–83.

does not give freely to those who are worthy of receiving and who have acted and desire to act bravely and will continue to do so [in the future], to whom else should [the emperor] make a donation?¹²

This passage permits us to make the following observations. The first is related to the nature of the donation. The properties donated were to be held by the Venetians in perpetuity, but clearly only as long as they would fulfil the services promised to the emperor.¹³ Another observation concerns the rights of the dispossessed owners. As already suggested, apart from state organisms, among the original owners were probably also monasteries, and maybe churches and private persons. Not only are these forbidden from turning against the beneficiaries of the donation, but the chrysobull does not say a word about any possible compensation. A final point regards the reasons put forward by the emperor in order to justify the confiscations. The passage we just saw, which is remarkably long, is addressed precisely to the dispossessed owners and serves the purpose of explaining the reason for the donation: it was done to remunerate the Venetians who had offered and had promised future loyalty and services aiming at the protection of Byzantium.

The chrysobull and donations of Alexios I were confirmed by a chrysobull of John II Komnenos in 1126 and then again in 1147 by a chrysobull of Manuel I Komnenos, both of which repeated the same reasons for the continued imperial favour: the faith of the Venetians and their services against the enemies of Byzantium.¹⁴ Soon after his confirmatory chrysobull, Manuel I issued a second chrysobull in 1148 by which he awarded Venice real estate in addition to that already owned in the quarter of Perama.¹⁵ The chrysobull includes the description of the borders of the enlarged Venetian concession. In accordance with this act, all the properties found within this area would belong to Venice. A number of the properties, certainly not all, which were acquired in this manner by the Venetians, are mentioned in the act: houses, exchange tables, unbuilt plots, and one *skala* on the Golden Horn. These belonged to the monasteries of 'Mili', Akoimetoï, and Saint-Basil and to the hospital of Saint Markianos. This donation was again conditional, just as that of Alexios I. According to the chrysobull, the real estate was given in remuneration of the services promised. The Venetians would keep these properties, it is understood, as long as they remained loyal to the emperor.¹⁶ With regard to the dispossessed owners, the chrysobull of 1148 also contains a clause forbidding any action against the beneficiaries:

12 Pozza and Ravegnani, *I trattati*, 42–3.

13 According to Lilie (*Handel und Politik*, 13), the chrysobull must have included a now missing part where the Venetians' obligations towards the emperor were related.

14 Pozza and Ravegnani, *I trattati*, nos. 3, 4.

15 Pozza and Ravegnani, no. 5.

16 Pozza and Ravegnani, 71, 74.

[The Venetians will possess these properties], to whomever they may belong, whether they are ecclesiastical, public, private, of a pious house or monastic, no action [in law] being possible against [the beneficiaries] on account of these [properties].¹⁷

The Venetians held their possessions until 1171, when Manuel I ordered the arrest of all the Venetians in Byzantium and the confiscation of their goods.¹⁸ From a chrysobull dating from 1189, we learn that, on the orders of the emperor, some unidentified Byzantines (*homines imperii nostri*) had taken possession of the Venetian properties in Perama.¹⁹ It is not impossible that at least some of these ‘men’ corresponded to the predominantly monastic owners dispossessed in 1148 or even back in 1082. These institutions would have probably seized the opportunity to ask for the restoration of their properties, especially if they had not been compensated in the meantime. As we shall see, the evidence concerning the Pisans is in favour of such an understanding. The Venetians probably returned to their quarter during the reign of Andronikos I Komnenos, by virtue of a now lost chrysobull ordering the restoration of the confiscated properties.²⁰ With the change of government, Venice sought and obtained again confirmation of its old privileges. In 1187, a chrysobull of Isaac II Angelos included a treaty agreed between Venice and Byzantium. In exchange for the Venetians’ pledge not to turn against the empire but rather to provide military aid against its enemies, the emperor promised, in particular, the confirmation of the earlier chrysobulls of Venice,²¹ the restoration of the landed properties they possessed in 1171 and the restitution of the movables confiscated.²² This last clause proved impossible to implement and two years later, in 1189, Isaac II issued another chrysobull dealing with the compensation of the Venetians.²³ In addition to his promise to pay an indemnity in cash, the emperor accepted Venice’s demand for the donation of the German and French concessions, which neighboured the Venetian quarter and included *emboloi*, rental houses and *skalai* having an annual revenue of 50 pounds of gold. The emperor invalidated the chrysobulls by which the quarters had been given to the Germans and the French, since, as he claimed, the services offered to the empire by the beneficiaries of these properties were minimal and did not correspond to the revenues they enjoyed. This chrysobull also contains a clause of guaranty:

17 Pozza and Ravegnani, 74: cuiuscumque iuris sint, sive ecclesiastici iuris sive rei publice sive privati sive sancte domus vel monastici, nulla actione locum excercendi habente contra eos gratia horum.

18 See P. Magdalino, *The empire of Manuel I Komnenos: 1143–1180* (Cambridge 1993) 93–4.

19 Pozza and Ravegnani, *I trattati*, 109.

20 *Ibid.*, 79.

21 The chrysobulls issued by Alexios I, John II, and Manuel I are also confirmed by two other chrysobulls Isaac II issued in the same year (1187): Pozza and Ravegnani, *I trattati*, nos. 6, 7.

22 Pozza and Ravegnani, no. 8.

23 *Ibid.*, no. 9.

[The Venetians] should receive all revenues [coming from these properties], without any harassment from the fisc or from any person, to which these [properties] belong and from which they were taken to be given to [the Venetians, whether these] are monasteries, pious houses, persons close to the emperor (no doubt *oikeioi*) or others.²⁴

It is unknown when and under what conditions the properties in question were donated to the Germans and the French.²⁵ It is in any case interesting that a clause of guaranty addressed to all possible former owners is included here, although the chrysobull only orders the transfer of the properties from the French and the Germans to the Venetians. Most probably this is owed to the fact that the properties that made up the quarters of the French and Germans had been confiscated from their owners. The same chrysobull of 1189 contains provisions concerning the real estate seized in 1171. In spite of the chrysobull issued by Isaac II in 1187 promising the restitution of the Venetian quarter, some of the properties were apparently still held by those who had received them in 1171, by virtue of an order of Manuel I. Isaac II gave permission to the Venetians to take these people to court.²⁶ This shows that the owners of the real estate were refusing to comply with the emperor's orders. The last chrysobull in favour of Venice was issued in 1198 by Alexios III Angelos. This act repeated and updated the treaty of 1187 and confirmed all previous chrysobulls.²⁷

Pisa

The donations and privileges awarded to Pisa were similar to those of Venice, albeit less extensive. A chrysobull issued in 1111 gave the Pisans a *skala*, some houses and an establishment (*katatopion*) where they could engage in commerce, in Constantinople.²⁸ From later acts we know that the Pisan concession was to the east of the Venetian, near the port of Neorion. No former owners of the properties ceded are mentioned in the chrysobull. Still, in view of what we know about all the other donations to the Italian city-states, confiscation is the most probable origin of these properties as well. The

24 *Ibid.*, 108: omnem introitum eorum accipere, nequaquam a fisco vel ab aliqua personarum, quibus hec attinent et quibus hec ablata ipsis dantur, infestationem aliquam manifestis Veneticis subire debentibus, quamquam monasteria sint sive sancte domus aut imperio nostro propinque vel alie.

25 During the reign of Manuel I, according to Jacoby, 'The Venetian quarter' (as in n. 8), 158–9.

26 Pozza and Ravegnani, *I trattati*, 109.

27 *Ibid.*, no. 11.

28 MM III, 9–13. The chrysobull issued by Manuel I in 1170 states that the Pisans had acquired, thanks to chrysobulls of his grandfather and father, an *embolos*, a *skala* and a church (MM III, 13). The church and the *embolos*, if this last is not identical to the *katatopion* with houses, were either given by a *paradosis* already in 1111, in accordance to the chrysobull of that date, or were added later by Alexios I or John II.

chrysobull of 1111 was awarded in exchange for the promise of the Pisans not to turn against Byzantium but rather to offer help in the event of an enemy attack. The stipulations of the chrysobull would remain unchanged as long as the Pisans respected their promises. The chrysobull of Alexios I was confirmed by John II in 1136.²⁹ The relations between Pisa and Byzantium became strained in the 1150s and 1160s. Between 1162 and 1166, Manuel I took the properties of the Pisans situated inside Constantinople and gave them other properties in an area opposite the capital (ἐν τοῖς πέραν μέρεσιν), no doubt Pera. Nevertheless, in 1170, Manuel issued a chrysobull that ordered the restitution to Pisa of the properties it had previously held within the capital.³⁰ The information of this chrysobull implies the following. Between 1162 and 1166, Manuel I gave to the Pisans properties, probably a *skala* and an *embolos*,³¹ situated opposite the capital. These properties are also likely to have been confiscated. At the same time, the emperor no doubt ordered the cession of the liberated properties in Neorion to some other beneficiary, most likely I think, to the owners that were dispossessed in 1111. In 1170, Manuel had no difficulty in taking back the same properties and giving them to the Pisans. This real estate was withdrawn again from the Pisans, following the massacre of the Latins in 1182 and the hostility that ensued between Byzantium, on the one hand, and Pisa and Genoa, on the other.³² The relations between the empire and Pisa were formally re-established in 1192 thanks to a chrysobull issued by Isaac II, which ordered, among other things, the restitution of their quarter.³³ According to this act, following 1182,

...all [the properties held by the Pisans in Constantinople]
had been restored to the monasteries and persons, from
which they had been withdrawn [in order to] be given to the Pisans.³⁴

Now, we have seen that there occurred two different confiscations of these same properties, carried out in favour of Pisa, one in 1111 and another in 1170. So the

29 The chrysobull of 1136 does not survive but is mentioned in the chrysobull of 1170 (MM III, 13); on its date, see R.-J. Lilie, *Byzanz und die Kreuzfahrerstaaten. Studien zur Politik des byzantinischen Reiches gegenüber den Staaten der Kreuzfahrer in Syrien und Palästina bis zum vierten Kreuzzug: 1096–1204* (Munich 1981) 106–7.

30 The Pisans promised in 1170 to have the same faith and fulfil the same obligations as they did towards the predecessors of Manuel. The emperor, on his part, confirmed the earlier chrysobulls concerning the donation of the real estate. Their provisions would remain unchanged as long as Pisa respected its agreements with Byzantium: MM III, 13–5. On the date of the forced transfer, probably done in reaction to Pisa's alliance with the German emperor, see Lilie, *Handel und Politik* (as in n. 5), p. 457–9.

31 Cf. the information about the properties given to the Genoese, probably in the same area: Sanguineti and Bertolotto, *Nuova serie*, 366–7.

32 On these events, see Lilie, *Handel und Politik*, 539–41.

33 MM III, 3–23.

34 *Ibid.*, 17: ἐφθασαν τὰ τοιαῦτα πάντα παραδοθῆναι τοῖς μοναστηρίοις καὶ τοῖς προσώποις, ἐξ ὧν ἀφαιρεθέντα τοῖς Πισσαίοις παραδόθησαν.

chrysobull of 1192 may be referring either to some beneficiaries that received these properties as imperial donation in the mid 1160s, lost them in 1170 and recovered them in 1182; or it may refer to the original owners, who, having lost their properties in 1111, got them back in the mid 1160s, lost them once more in 1170 and then recovered them again in 1182. Although more complicated, I find the last possibility more likely. The fact that there was restoration in 1182 is in favour of there having been restoration also in the mid 1160s. That several decades had elapsed since the confiscation of 1111 does not forbid such an understanding since most of the owners were probably monasteries. In either case, the information of the chrysobull of 1192 implies the following. First, that the dispossessed owners had not been compensated for the loss of their properties, hence their right to restoration. Second, that the rights of property of these owners had not ceased to exist at the time of confiscation, but could be used in order to gain the restitution of their estate when and if the occasion arose. The chrysobull issued in 1192 did not only confirm the ancient privileges of Pisa but also provided for the donation of real estate in the district of Neorion, in addition to that held in the past. The chrysobull contains a description of the Pisan concession as it appeared after the new donation.³⁵ The most important properties given were the 20 or more rental houses (*enoikika*) of the monastery of Kyr Antonios, having an annual rent of 246 *hyperpyra*, and a *skala* on the Golden Horn that had previously been donated by Isaac II to the hospital of the Forty Martyrs.³⁶ Other properties were also included in the new concession, in particular a plot of land of the monastery of Peribleptos and a section of a *metochion* of the Bithynian monastery of Trichinarea. Once more, the donations were awarded because the Pisans had promised to remain loyal and offer services.³⁷ They would remain valid as long as Pisa respected its obligations towards Byzantium.³⁸ The chrysobull of 1192 delivered to Pisa contains an interesting clause regarding the rights of the dispossessed owners as well as the emperor's claims in the matter of confiscation.³⁹ This clause, which does not appear in the previous chrysobulls, is probably new. I will not discuss it now but later because an extended version of this clause is to be found in the chrysobull issued to the Genoese also in 1192. The same chrysobull in favour of the Pisans mentions the existence, south of the Pisan quarter, of properties that had been donated to the city of Amalfi.⁴⁰ The concession of a quarter to the Amalfitans probably took place during the reign of Alexios I.⁴¹

35 MM III, 18–23. It is worth noting that Pisa apparently owned, obviously already before 1182, four *skalai* instead of one *skala* mentioned in the chrysobulls of 1111 and 1170: MM III, 21–2. On the number of *skalai* owned by the Pisans in 1192, cf. Magdalino, *Constantinople médiévale* (as in n. 8), 86.

36 Cf. MM III, 16.

37 MM III, 4, 8–9, 17–8.

38 MM III, 16–7, 23.

39 *Ibid.*, 18.

40 *Ibid.*, 18, 19, 20, 22.

41 Magdalino, *Constantinople médiévale* (as in n. 8), 86.

Genoa

The Genoese took possession of a quarter including an *embolos* and *skalai* in the area of Galata opposite Constantinople probably in 1160.⁴² Their quarter, however, was sacked by the Pisans in 1162 and Genoa only took possession of a quarter again in 1169 following a chrysobull of Manuel I. This quarter was situated at ‘Orcu’ opposite the capital, probably in the same area as the *embolos* acquired in 1160.⁴³ However, a few months later, in 1170, the Genoese obtained from Manuel, in the place of the properties they had received opposite the city, a quarter inside Constantinople, in the neighbourhood of Koparia near the port of Neorion.⁴⁴ The description of this last concession mentions several properties that were confiscated in order to be given to the Genoese, often specifying the owner of these estates: a small *embolos*, houses and land plots of the monastery of the Ex-Logothetes (*apo Logothetou*); houses and a land plot of the monastery of Angourion; a house of the monastery of Hypsele; a *skala*, including houses and workshops, of the monastery of Manuel.⁴⁵ All these donations, which accompanied tax exemptions and other privileges, were given in exchange for the loyalty and services promised by the Genoese. As in the case of the Pisans, the Genoese were forced to abandon their quarter following the massacre of 1182. Given what we know about the Pisan quarter, it is most probable that here too the real estate confiscated in 1170 in order to be ceded to the Genoese was restored to the original owners. In 1192, a chrysobull was issued in favour of the Genoese stipulating, among other things, the extension of their restored quarter in Constantinople.⁴⁶ The description of the extended concession contains information on the properties confiscated on this occasion: several houses of the monasteries of the Ex-Logothetes (*apo Logothetou*) and of the *patrikios* Theodosios, a *skala* of the monastery of Manuel and the palace of Botaneiates, the latter no doubt belonging to the state.⁴⁷ Again these donations were made in remuneration of the loyalty and services of the Genoese.⁴⁸ The chrysobull of 1192 in favour of Genoa contains a clause of guaranty the second part of which is almost identical to the clause found in the chrysobull issued to the Pisans two months earlier. The first part of the clause, however, contains additional elements:

...the possession of the above mentioned maritime *skalai*, houses, the *embolos* and the *oikos* of Botaneiates, will not be withdrawn

42 This was done in implementation of an agreement with Byzantium dating from 1155: Sanguineti and Bertolotto, *Nuova serie*, 343–5; cf. M. Balard, *La Romanie génoise (XII^e – début du XV^e siècle)*, 2 vols. (Rome 1978) 22–5, 106–8; Lilie, *Handel und Politik* (as in n. 5), 456.

43 Sanguineti and Bertolotto, *Nuova serie*, 366–7; cf. Balard, *La Romanie génoise*, 108.

44 Sanguineti and Bertolotto, *Nuova serie*, 421–3.

45 Sanguineti and Bertolotto, *Nuova serie*, 364–6.

46 *Ibid.*, 413–33.

47 *Ibid.*, 434–44.

48 In particular, *ibid.*, 420.

from [the Genoese], because the emperor has seized all these [properties] from their owners by virtue of the lawful power entrusted to him and because [the emperor] is donating these to the commune of Genoa for the advantage and benefit of Byzantium.⁴⁹

The emperor then explains that the privileges and donations to the Genoese will hold as long they remain faithful and offer the services agreed. The clause ends with the passage which is also found in the chrysobull of the Pisans:

...these [dispossessed owners] will receive compensation from the fisc. If they do not [obtain reparation from the fisc], they should not make a lawsuit against the Genoese, but rather against the fisc, within the customary time limit. If they gain compensation [from the fisc], they should be satisfied with what was given to them. [But] if they do not, they should accept [the situation], because the emperor has the right by law to knowingly donate belongings of third parties, and it is [by virtue of this right] that he is donating these [properties] to the people of Genoa.⁵⁰

This clause constitutes one of the clearest declarations of the Byzantine emperor concerning his rights over the land of his subjects. In the first part, the emperor invokes his lawful power to confiscate for the benefit of the empire. This is an ideological construction that is not entirely new. The same argument is implicit in the clause of guaranty included in the chrysobull of Alexios I, more than a century earlier. According to that act the owners had to respect the imperial decision and should not contest the donation because it had been done in order to reward the servants of the empire. In 1192, however, this idea is expressed very clearly. This construction would become the main argument used in the later centuries to justify confiscations.⁵¹ The second part of the clause, also included in the chrysobull for Pisa, is of a different nature. This part has a pronounced juridical character. First of all, regarding the emperor's rights, it is stated that

49 *Ibid.*, 420: οὐδὲ ἡ κατοχὴ καὶ νομὴ τῶν ἀναγεγραμμένων παρῳαλίων σκαλῶν καὶ τῶν οἰκημάτων καὶ τοῦ ἐμβόλου καὶ αὐτοῦ τοῦ οἴκου τοῦ Βοτανειάτου ἀφαιρεθήσονται ἐξ αὐτῶν, ὡς τῆς βασιλείας μου κατὰ τὴν δοθεῖσαν αὐτῇ ἔννομον ἐξουσίαν ἀφαιρουμένης τὰ τοιαῦτα πάντα ἀπὸ τῶν κατεχόντων αὐτὰ καὶ δωρουμένης τῷ κοινῷ τῆς Γενούας διὰ τὸ συμφέρον καὶ χρῆσιμον τῇ Ρωμανίᾳ.

50 Sanguineti and Bertolotto, *Nuova serie*, 420: τῶν ἀφαιρεθέντων ταῦτα τὸ ἱκανὸν σχεῖν μελλόντων ἀπὸ τοῦ δημοσίου, κἂν μὴ σχῶσι δέ, μὴ κατὰ τῶν Γενουϊτῶν ὀφειλόντων ἐνάγειν, ἀλλὰ κατὰ τοῦ δημοσίου αὐτοῦ ἐντὸς τοῦ νενομισμένου καιροῦ κἂν μὲν τύχωσιν ἀντισηκώσεως, ἔχειν τὸ ἱκανὸν διὰ τοῦ δοθέντος, κἂν μὴ τύχωσι δέ, στέργειν ὡς τῆς βασιλείας μου ἐπ' ἀδείας ἐκ τῶν νόμων ἐχούσης ἐν εἰδήσει δωρεῖσθαι καὶ τὰ ἀλλότρια καὶ οὕτω δωρουμένης τὰ τοιαῦτα τῷ τῆς Γενούας πληρώματι. Cf. MM III, 18.

51 Cf. K. Smyrlis, 'The state, the land and private property. Confiscating monastic and church properties in the Palaiologan period', in D. Angelov (ed.), *Church and society in late Byzantium* (Kalamazoo 2009) 58–99.

the *basileus* has the right, by law, to knowingly donate the belongings of third parties. Concerning the rights of those dispossessed, the same clause says that they may not turn against the beneficiaries of the donation but only against the fisc within a certain time limit; the owners may do nothing more if they do not obtain compensation from the fisc. Konstantinos Triantaphyllopoulos has identified the law invoked by the emperor as being a rule promulgated in the fifth century by emperor Zeno (474–91).⁵² Here is a translation of a passage of the law as it appears in the *Basilika*:

It is forbidden that legal actions regarding the ownership
[of properties acquired from the imperial treasury either
by purchase or donation] be made against the buyers of
the things in question or against those who have received
these things by imperial donation. Those who so wish
may turn against the imperial treasury within [a time limit of]
four years.⁵³

It will be noted that this law does not give the right to the emperor to donate alien properties. Its main aim is to guarantee the ownership of those acquiring from the fisc, either by purchase or by donation, even in the case where the ownership of the property alienated would be disputed by a third party. The law does forbid those who claim ownership or other rights over the alienated property from turning against those acquiring, obliging them instead to seek redress from the fisc within four years. But there is no allusion in the law to any discretionary right of the fisc not to compensate the plaintiffs. Those who drafted the chrysobulls of 1192 for Pisa and Genoa over-interpreted one section of the law and introduced a significant new element in order to arrive at the guaranty clause we examined earlier.⁵⁴

Before we conclude the examination of the evidence, we should have a quick look at the last known donation of properties to Genoa, which took place in 1202. Only the description of the properties given has survived, from which we learn that the Genoese

52 K. Triantaphyllopoulos, 'Die Novelle 56 Leos des Weisen und ein Streit über das Meeresufer im 11. Jahrhundert', in *Festschrift Paul Koschaker* (Weimar 1939; repr. Leipzig 1977) 323; Cf. A. Diomedes, 'Πηγὴ καὶ ἔκτασις τῆς αὐτοκρατορικῆς ἐξουσίας εἰς τὸ Βυζάντιον', *Byzantina–Metabyzantina* 1/2 (1949) 57.

53 *Basilicorum libri LX*, ed. H. J. Scheltema and N. Van der Wal (Groningen 1953–1988), B. 50. 13. 2: μηδὲ δύνασθαι κατὰ τῶν ἀγοραστῶν τῶν εἰρημένων πραγμάτων ... ἢ κατ' ἐκείνων, οἵτισι περὶ τῶν τοιούτων πραγμάτων φιλοτιμία ἡμετέρα κατηνέχθη ... ἀγωγὰς ἐπὶ ἐκδικήσει δεσποτείας ... κινεῖσθαι παρεχομένης τοῖς βουλομένοις ἀδείας εἰσω τεσσάρων ἐνιαυτῶν κατὰ τῶν θείων θησαυρῶν ... ἀγωγὰς ... ἐκγυμνάζειν.

54 This was not the first time a Byzantine emperor misinterpreted ancient law in order to seize private properties. According to Attaleiates (277–8), the emperor Michael VII (1071–1078) confiscated the *skalai* of Constantinople and its surroundings by presenting old and obsolete pretexts. It has been suggested that these 'pretexts' referred to the novels of Justinian concerning the seashore, which Michael VII used, both correctly and wrongly, to achieve his aims (Triantaphyllopoulos, *op. cit.*, esp. 318).

received fourteen houses with an annual rent of almost 60 *hyperpyra* belonging to the monasteries of Hypsele, the *patrikios* Theodosios and the Ex-Logothetes (*apo Logothetou*); a *skala* of the monastery of Manuel yielding an annual revenue of one pound of gold was also ceded to Genoa.⁵⁵

Conclusion

From 1082 to 1202, Byzantine emperors carried out repeated confiscations of real estate situated in the area of Perama-Neorion, inside Constantinople, and at Pera, opposite the city. These properties included rental houses and workshops, unbuilt plots and *skalai* and were sometimes significant. In 1189, for example, the combined annual revenues of the quarters of the French and of the Germans were estimated at 50 pounds of gold. At least in the area of Perama-Neorion, the properties seized seem to have belonged almost exclusively to monasteries.⁵⁶ Paul Magdalino has suggested that the choice of the location of the Italian concessions was determined both by the desires of the beneficiaries and by the availability of property that could be alienated. According to this argument, the dispossessed monasteries were all relatively modest establishments that the emperor could afford to offend.⁵⁷ This is not very different from what was happening in the Palaiologan period, when monastic lands seem to have been the favourite target of confiscations.⁵⁸

There is little information concerning the question whether the dispossessed owners were compensated or not. The sole direct evidence, which comes from the chrysobull of 1192 in favour of the Pisans, suggests that no compensation was given.⁵⁹ That is, at least until 1192, when the chrysobulls issued to Pisa and Genoa provided for the right of the owners to seek compensation from the fisc. Although the extent to which such clauses were translated into practice is uncertain, one is obliged to note that in the clauses included in earlier chrysobulls there is no mention of compensation.

The same evidence, coming from the chrysobull of 1192 issued to Pisa, shows that in at least one case the dispossessed owners managed to recover their properties. That was in 1182, when the proprietors profited from the expulsion of the Pisans. I do not think that this was an exceptional occasion. The owners probably recovered their belongings every

55 Sanguineti and Bertolotto, *Nuova serie*, 475–99.

56 This phenomenon clearly reflects the property pattern of the particular area. It was not only the dispossessed owners that were predominantly monastic. The neighbours too of the Italian concessions were for the most part monasteries or churches; cf. Magdalino, *Constantinople médiévale* (as in n. 8), 83.

57 Magdalino, 'Maritime neighborhoods' (as in n. 8), 222–3.

58 See Smyrlis, 'The state, the land and private property' (as in n. 51), esp. 76–77.

59 The inclusion of a clause of guaranty in the chrysobull of 1189, which stipulated the transfer of the German and French quarters to the Venetians, may also be seen as in indication that the owners dispossessed in favour of the Germans and the French had not been compensated.

time the foreigners were expelled from their concessions. This may also explain why a clause of guaranty is included in the chrysobull of 1189, which did not order any new confiscation but simply the transfer of the French and German concessions into the possession of the Venetians. As already noted, this evidence suggests that the property rights of the dispossessed owners did not disappear with confiscation but could be reactivated at any convenient opportunity. Again this is very similar to what we see in the documents coming from the later centuries.⁶⁰

These dormant rights of the old owners did not diminish the property rights the foreigners acquired over their concessions. The imperial acts guarantee these rights and state that the donation will remain valid in perpetuity, provided that the beneficiaries continue to offer their services to the empire. This last condition represents of course a serious restriction of the foreigners' property rights. Indeed, the properties were withdrawn from their beneficiaries whenever the emperors were not content with them. The dispossessed owners' dormant rights did tend to limit the state's ability to dispose freely of the lands it seized. This was because the properties were confiscated for a specific reason that ceased to exist as soon as the foreigners were expelled. Unless the state had in the meantime provided compensation, a possibility envisaged by the chrysobulls of 1192, it would normally come under pressure to return the properties to their original owners. Given that the confiscations were essentially transfers of property from one owner to another and accepting that the state would be obliged to restore the estates as soon as the donations were invalidated, we may conclude that the state did not really acquire the property of these estates. But even if we admit this interpretation we may still call the measures confiscations since the state seized lands and used them to pay its servants.

Concerning the claims put forward to justify the measures and the reaction of those affected, it has been noted here that, already in the chrysobull of 1082, it is implicitly stated that the emperor has the right to donate alien properties for services related to the protection of the empire. This idea reappears, more developed, in 1192, when it is affirmed that the emperor has the 'lawful power' to donate the belongings of third parties for the benefit of Byzantium. In the same year, however, we encounter elements in the imperial discourse that seem to be new. First of all, the rights of the emperor in this matter are presented as deriving from a specific law going back to the emperor Zeno. Second, in accordance with this law, the right of the dispossessed owners to turn against the fisc is recognized by the emperor. To my mind, this development can only be explained as the result of a growing opposition to the measures from those affected. In support of this view is the fact that in 1189 there were owners who refused to cede their possessions to the Venetians, that is, people who did not comply with the stipulations of the chrysobull issued by Isaac II in 1187. This development may be seen as a step towards a greater respect of private property. But even so, this was a move that apparently had no sequel in the period that followed.

60 Cf. Smyrlis, 'The state, the land and private property', 65.

To return to the initial question, the evidence examined here would at first sight seem to lend support to Kazhdan's claim that the state could freely confiscate private property. It is true that the confiscations were simple administrative measures and no court decision was needed for them to be carried out. This practice constitutes indeed a serious restriction of the right of private ownership, all the more so since the owners do not seem to have been compensated for the properties seized. Nevertheless, the expression 'arbitrary', used to characterize the state's actions, is not accurate, at least with regard to the evidence concerning the Italian concessions. Not all chrysobulls contain passages serving the purpose of explaining the measures. But, whether stated or suggested, there is in all of them a common and consistent justification of the expropriations. They were done for the protection of the empire from external enemies. It is also clear that the emperor acted under a certain constraint, in the sense that he could only donate to the Italians properties that lay in a specific area of Constantinople. This is not stated anywhere but it was certainly understood by everybody. The confiscations were therefore both adequately explained to those concerned and justified by the circumstances, that is, in essence legitimate. And although from a modern point of view the procedure followed to carry out the expropriations seems oppressive, it is significant that the dispossessed owners do not appear to have been voiceless subjects who did not dare oppose the will of the emperor. Indeed, the emperors felt obliged to address to them clauses explaining their actions and, on at least one occasion, these owners resisted the imperial orders to surrender their properties. The inclusion of such clauses in the chrysobulls indicates that the scope and frequency of confiscation was limited.

Where do these confiscations stand with regard to the other known confiscations of land in Byzantium? And what is their relation to the economy of the state? In fact, confiscations, which are by definition related to state finances, often reflect policies or practices that are linked to the financing of the administration and the army. A brief examination of the documented cases dating from the period before 1204, suggests that the confiscations in favour of the Italians were of a different kind. Leaving aside punitive confiscations, it seems that expropriations before the reign of Alexios I were done with the purpose of, or in any case resulted in, augmenting the lands directly controlled by the state. Among the best known cases are the following. Basil II is reported to have confiscated the fortune of Eustathios Maleinos after this man's death. This is stated in conjunction with the legislation of Basil II and his predecessors, which aimed at protecting the village commune.⁶¹ But, apart from being the enemy of the powerful, Basil is also considered to be the emperor under whom there began a deliberate policy of bringing more land into state ownership.⁶² Isaac I Komnenos too, in his effort to improve state finances, confiscated many estates from private persons and monasteries and attached them to the crown.⁶³

61 Ioannes Skylitzes, *Synopsis historiarum*, ed. H. Thurn (Berlin 1973) 340.

62 N. Oikonomides, 'The role of the Byzantine state in the economy', in *EHB*, 992, 1006.

63 Attaleiates, ed. Bekker, 60–1; ed. Pérez Martín, 47–8; cf. Michel Psellos, *Chronographie ou histoire d'un siècle de Byzance (976–1077)*, ed. E. Renauld (Paris 1926), II, 120.

Then during the reign of Alexios I, beginning in the late 1080s, state officials withdrew vast tracts of land from their ecclesiastical and lay owners. This was done by first raising the rate of the land tax and then applying the measure of *epibole*, which demanded that the properties held by a landowner should correspond to the taxes paid; what land was found to be in excess was confiscated.⁶⁴ At least part of the estates acquired in this manner were not kept by the state but were ceded to relatives and other servants of the emperor⁶⁵. Indeed, it is during the reign of Alexios I that we witness the development of the new system of remuneration of state servants by privileges and by grants of land that would later evolve into the better known *pronoiai*.⁶⁶ The confiscations in favour of the Italians are in many respects different from those made in application of the measure of *epibole*, but they both share a common characteristic, albeit partially. In both cases, the land seized was not kept by the state but was ceded to certain beneficiaries. Now, if we look at the evidence coming from the later period, that is, after 1204, we may find great similarities between the confiscation practices of the Palaiologan state and the expropriations in favour of the Italians. In the late period, *ad hoc* confiscations of land carried out so that the property may be ceded to a certain *pronoiai* were a relatively common practice. And of course, most of these grants were done on the condition that the beneficiaries offer military service to the empire. Another obvious similarity of the real estate donations to the Italians with the later *pronoiai* is their pronounced pecuniary character. The property donations were part of a larger, essentially, financial package that included annual rents paid directly to the republics and complete or partial exemption from commercial duties. Although not all of the relevant documents, chrysobulls and *praktika paradoseos*, mention or give details of the revenues of the properties ceded, it is clear that the houses, shops, and *skalai* were seen as a source of income.⁶⁷ The biggest difference between the donations

64 These confiscations are documented by the archives of several Athonite monasteries and by the letters of Theophylact of Ochrid; see *Actes d'Iviron* II, ed. J. Lefort, N. Oikonomidès, D. Papachryssanthou (Paris 1990), 28–9; J. Lefort, 'The rural economy, seventh–twelfth centuries', in *EHB*, 288; A. Harvey, 'The land and taxation in the reign of Alexios I Komnenos: The evidence of Theophylact of Ochrid', *REB* 51 (1993) 150–1. On *epibole*, see most recently Oikonomidès, *Fiscalité* (as in n. 3), 56–61.

65 *Actes d'Iviron* II, 29.

66 Oikonomides, 'The role of the Byzantine state', 1039 ff. Alexios I was not the first emperor to grant land to state servants, soldiers in particular. Cf. the remarks of Nikos Oikonomides concerning Leon Kephalas (*ibidem*, 1041) and of Paul Magdalino on foreign mercenaries in the 11th c: 'The Byzantine army and the land: From *stratitikon ktema* to military *pronoia*', in *Byzantium at War: 9th – 12th c.* (Athens 1997) 26–32. Cf. also the case of the land grants to Armenian princes in eastern and central Anatolia during the 10th and 11th c: J. D. Howard-Johnston, 'Crown lands and the defence of imperial authority in the tenth and eleventh centuries', *BF* 21 (1995) 94–7.

67 When the documents mention the properties' revenue they speak of rent (two types of rent are mentioned: *enoikion* and *emphyteuma*); they also use the generic term 'income' (*eisodos*) which clearly refers to rent. It is probable that not all properties were rented out, especially the *skalai* from which the beneficiaries would collect dues paid on transactions taking place there; on the revenues of these establishments, see P. Magdalino, 'The grain supply of Constantinople, ninth–twelfth centuries', in C. Mango and G. Dagron (eds.) *Constantinople*

to the foreigners and the *pronoiai* is that in the case of the latter the state retained the ownership of the land ceded, the grant normally being limited to the life-time of the *pronoiaros*. On the contrary, the donations to the Italians, although conditional, were meant as permanent transfers of property. Rather than seeing in this a reflection of the general practices of the Comnenian era, it is preferable to view it as the natural consequence of the fact that the beneficiaries here were not men but states.⁶⁸

The confiscations in favour of the Italians seem to be essentially of the same nature as those of the later centuries. They both can be seen as a side effect of the system according to which the state remunerated its servants by land grants. Indeed, what we know about the period after 1204, suggests that this system created an increased need for land, especially in some specific areas of the empire's territory. Although the state's land resources must have normally been great, they may have not always been sufficient. There is no doubt that, in order to satisfy the beneficiaries of land grants, the latter would have to meet some conditions, which must have included the estate's location.⁶⁹ It has already been suggested that this constraint was present in the case of the concessions to foreigners of properties on the Golden Horn.

The existence of a relation between the donations to the Italian city-states and the developments that occurred in the Comnenian period in the ways the state rewarded its servants has also been postulated by Angeliki Laiou. She has argued that the kind of agreement we see in the chrysobulls issued to the Italians does not derive from western influences but that it represents an internal development. Laiou has also suggested that such bilateral agreements may have not been used exclusively in the relations of Byzantium with foreign powers but also between the emperor and his subjects.⁷⁰ It is impossible to say with certainty if what we see in the evidence concerning the Italians reflects a general or frequent practice that affected not only Constantinople but the whole empire. But I do not see anything opposing such an idea. The fact that no trace of such practices is to be found in the monastic archives, our main source of information on confiscation in the later period, is not significant since very few acts have survived from the twelfth century.⁷¹ Moreover, what we know about the confiscation of lands in favour

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and its Hinterland (Cambridge 1995) 42–3. Interestingly none of our documents mentions any fiscal exemption in relation to the properties ceded to the Italians, which means that the taxes would continue to be paid.

68 According to Oikonomides, land grants were initially perpetual, as in the case of the donations to Leon Kephala; by the 12th c. however the grants — *pronoiai* — had been limited to the life-time of the beneficiaries: 'The role of the Byzantine state', 1039–43.

69 Smyrlis, 'The state, the land and private property', 64.

70 Laiou, 'The emperor's word' (as in n. 6).

71 There is, however, a case of a monastic estate that was seized by the state, possibly in order to be given to a soldier: *Actes de Lavra* I, ed. P. Lemerle, A. Guillou, N. Svoronos (Paris 1970) no. 56 (1104), apparatus; cf. Oikonomides, 'The role of the Byzantine state', 1043.

of the Italians has the characteristics of a regular practice: a procedure repeated several times, with no significant changes, over a period of 120 years; a guaranty clause addressed not to the specific victims of the confiscation but to all possible owners. One may then imagine that the situation in the twelfth century resembled that of the later centuries, when the state occasionally confiscated estates, often monastic, in order to cede them to *pronoiaroi*.